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SUPREME COURT
STATE OF WASHINGTON

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL BROOM; KEVIN BROOM; and
ANDREA BROOM,

RESPONDENTS,

vs.

MORGAN STANLEY DW
INCORPORATED and KIMBERLY ANNE
BLINDHEIM,

PETITIONERS.

No. 82311-1

RESPONDENT BROOMS'
REVISED SECOND
STATEMENT OF
ADDITIONAL AUTHORITY
[RAP 10.8]

Pursuant to RAP 10.8, Respondents the Brooms wish to call the
Court's attention to the following additional authorities:

ORIGINAL

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ATTACHMENT TO EMAIL

Issue to which all the foregoing authorities pertain: Other jurisdictions that follow a rule of narrow review of arbitration based on error of law on the face of the award:

1. ***First Health Group Corp. v. Ruddick*, 393 Ill.App.3d 40, 52-53, 911 N.E.2d 1201 (2009)** – “As noted above, ‘judicial review of an arbitrator’s award is extremely limited, more limited than appellate review of a trial.’ *Anderson*, 383 Ill. App.3d at 479, 322 Ill. Dec. 104, 890 N.E.2d 1023 Nonetheless, a court may vacate an award if ‘a gross error of law or fact appears on the face of the award.’ *Anderson*, 383 Ill. App.3d at 479, 322 Ill. Dec. 104, 890 N.E.2d 1023; *Herricane*, 354 Ill. App.2d at 156, 289 Ill. Dec. 843, 820 N.E.2d 619.”

2. ***Washington v. Washington*, 283 Mich.App. 667, 671-72, 770 N.W.2d 908 (2009)** – “Judicial review of arbitration awards is usually extremely limited [O]ur Court has repeatedly stated that “arbitrators have exceeded their powers whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law.” *Dohanyos v. Detrex Corp. (After Remand)*, 217 Mich. App. 171, 176, 550 N.W.2d 608 (1996); see also *Miller v. Miller*, 474 Mich. 27, 30, 707 N.W.2d 341 (2005) and *Krist v. Krist*, 246 Mich. App. 59, 62, 631 N.W.2d 53 (2001). Pursuant to MCL 600.5081(2)(c), then, a party seeking to prove that a domestic relations

arbitrator exceeded his or her authority must show that the arbitrator either (1) acted beyond the material terms of the arbitration agreement or (2) acted contrary to controlling law.”

3. *Welty v. Brady*, 123 P.3d 920, 924 (Wyoming 2005) – “[T]he scope of judicial review of arbitration awards is very narrow. As such, we have stated that an arbitration award may be vacated if the appellant shows by clear and convincing evidence that the award ‘was obtained by fraud, corruption, behavior beyond the bounds of natural justice, excess of authority, or a manifest mistake of fact or law appearing upon the face of the award....’ [citations omitted]”

4. *Tiberghien v. BR Jones Roofing Co.*, 151 N.H. 391, 856 A.2d 21 (2004): In reviewing arbitration decision for “plain mistake”, Court clarifies: “ ‘Plain mistake’ refers to errors of fact and law that are ‘apparent on the face of the record and which would have been corrected had [they] been called to the arbitrator's attention.’ *John A. Cookson Co. v. NH Ball Bearings*, 147 N.H. 352, 356, 787 A.2d 858 (2001) (quotation omitted). . . .”

5. *State Office of Employee Relations v. Communications Workers of America*, 154 N.J. 98, 111, 711 A.2d 300 (1998) – In determining court authority to vacate arbitration decision: “The statutory phrase ‘undue means’ ordinarily encompasses a situation in which the arbitrator has

made an acknowledged mistake of fact or law or a mistake that is apparent on the face of the record.”

6. *Anthony v. Kaplan*, 324 Ark. 52, 59, 918 S.W.2d 174 (1996) –

“Unless the illegality of the decision appears on the face of the award, courts will not interfere merely because the arbitrators have mistaken the law, or decided contrary to the rule of established practice as observed by courts of law and equity.”

7. *Parr Construction Co. v. Pomer*, 217 Md. 539, 544, 144 A.2d 69

(1958) (keycited – still good law in Maryland) – “It has also been held

that an [arbitration] award will not be set aside for any mistake of law or fact not appearing on its face.”

RESPECTFULLY SUBMITTED this 27th day of January, 2010.

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CERTIFICATE OF SERVICE

I, Michael T. Schein, hereby certify that on the 27th of January, 2010, the foregoing REVISED SECOND STATEMENT OF ADDITIONAL AUTHORITY was served by regular mail to all counsel of record, and by and PDF via email where indicated, to wit:

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Dated at Seattle, WA this 27th day of January, 2010.

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